

STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT  
*(On Appeal from the Court of Appeals)*

LISA TYRA,

Plaintiff-Appellant,

vs.

Supreme Court No.  
Court of Appeals No. 298444  
L.C. Case No. 09-103111-NH

ORGAN PROCUREMENT AGENCY OF  
MICHIGAN, a Michigan corporation d/b/a  
GIFT OF LIFE MICHIGAN, STEVEN COHN,  
M.D., WILLIAM BEAUMONT HOSPITAL,

Defendants-Appellants,

and

DILLIP SAMARA PUNGAVAN, M.D. and  
JOHN DOE,

Defendants.

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## **SUPPLEMENTAL AUTHORITY BRIEF**

Since Defendants-Appellants filed leave to appeal to this Court, the Court of Appeals invoked a Special Panel pursuant to MCR 7.215(J) to consider the same legal question presented by this case. *Furr v McLeod*, \_\_\_ Mich App\_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 310652; issued April 10, 2014). That decision was the subject of a Supplemental Authority Brief submitted by Co-Defendant/Appellant Organ Procurement Agency of Michigan d/b/a *Gift of Life Michigan* (hereafter “Gift of Life”). Gift of Life’s Supplemental Brief discussed the Court of Appeals opinions issued by the first Panel and then the Special Panel convened to rehear *Furr*. Gift of Life described the current split and ongoing divide over the legal issue presented by this case and the need for guidance from this Court. Since the Special Panel’s decision in *Furr*, the Court of Appeals has decided another case on the same legal issue presently before the Court. *Zwiers v Growney*, unpublished per curiam opinion of the Court of Appeals, issued June 24, 2014 (Docket No. 312133) (Exhibit A).

The Court of Appeals’ most recent decision in *Zwiers* emphasizes the need for this Court to grant leave to appeal and render a decision on the merits of the case. The Special Panel in *Furr* relied on the 2009 *Zwiers* decision as binding authority - the Panel could not conclude with certainty that this Court overruled *Zwiers* and therefore the holding in *Zwiers* controlled the case. Completing the circle, the majority opinion in the 2014 *Zwiers* decision reaffirmed the reasoning of the 2009 case and cited to the Special Panel in *Furr v McLeod*. The concurring opinion held the Special Panel’s decision in *Furr* controlled the disposition of the 2014 *Zwiers* decision (although if free to do so the Judge would have found *Driver*, 490 Mich 239, overruled *Zwiers*).

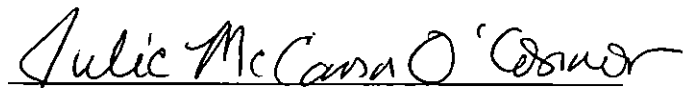
MCR 7.302(B)(5) provides that grounds for granting an application for leave to appeal are appropriate where “in an appeal from a decision of the Court of Appeals, the decision is

clearly erroneous and will cause material injustice or the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.” The addition of the 2014 *Zwiers* opinion only adds to the disagreement and confusion surrounding application of the correct rule of law. As such, it strengthens the need for the Supreme Court to grant the Defendants’ Application for Leave to Appeal.

WHEREFORE, Defendants-Appellants WILLIAM BEAUMONT HOSPITAL and STEVEN COHN M.D., by and through their counsel, respectfully request this Honorable Court grant their Application for Leave to Appeal and reverse the decision of the Court of Appeals.

Respectfully submitted,

O’CONNOR, DEGRAZIA, TAMM & O’CONNOR, P.C.

A handwritten signature in cursive script, reading "Julie McCann O'Connor".

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